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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,459	02/17/2004	Timothy M. Holub	306258	1389

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LEYDIG, VOIT & MAYER, LTD. (SEATTLE OFFICE) TWO PRUDENTIAL PLAZA SUITE 4900 CHICAGO, IL 60601-6731		

EXAMINER	
JACKSON, DANIELLE	

ART UNIT	PAPER NUMBER
3636	

NOTIFICATION DATE	DELIVERY MODE
01/10/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

Application No.

10/780,459

Applicant(s)

HOLUB, TIMOTHY M.

Examiner

Danielle Jackson

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 41-57,72 and 75-83 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-57,72 and 75-83 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 10/12/07.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The indicated allowability of claims 46-56 and 61-71 is withdrawn in view of the newly discovered reference(s) to McGill (US-1,539,907). Rejections based on the newly cited reference(s) follow.

#### ***Claim Objections***

2. Claim 72 is objected to because of the following informalities: "attached to first end" should be rewritten as --attached to the first end-- so it is understood that first end is the same first end already recited above in the claim. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 41-51, 55-57, 78-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGill (US-1,539,907) alone.

McGill discloses a fabric covering comprising: a top (10) that is a rain fly (page 1, lines 74-76) or a canopy (page 2, lines 52-56); a flexible protrusion (G) comprising a flexible bead (16) connected to the top by a flexible strip of material (15) extending along the entire edge of the fabric covering (see Fig. 1). While

D.D.  
McGill does not specifically disclose the flexible protrusion as being able to move, it <sup>appears</sup> ~~appears~~ it would be able to move as nothing is preventing it from slightly rotating. It would of been obvious to one of ordinary skill to make the flexible protrusion rotatably connected to the top so that it could rotate between a first position spaced a first distance from the top and a second position spaced a second distance from the top, wherein the second distance is greater than the first distance so that when a back portion of the loop forms a wall it will be able to hold more water, especially if the wall is extended to a right angle. Further regarding the support structure, McGill teaches the flexible protrusion to be supported by the flexible strip of material, which is connected to the top at a top end, forms a loop and is connected back to the top end at an overlap section, and wherein the flexible bead is positioned in the loop (page 1, lines 85-88), wherein the support structure comprises the top end and the overlap section.

Further regarding claim 51, McGill teaches a fabric downspout (the downspout is a continuation of the flexible protrusion which is made of canvas; page 2, lines 9-13) arranged to receive water flowing along the flexible protrusion at a first end to direct water to a second end of the downspout (page 2, lines 16-25).

4. Claims 52-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGill (US-1,539,907) alone as applied to claim 51 above, and further in view of Knoop et al. (US-6,612,075 B1).

McGill is discussed above, but lacks a downspout comprising a tube of fabric having a ring at the first end for holding the first end open. Knoop et al. teaches a downspout meant to be removably connected to a gutter (20) to receive water at a first end which comprises a ring (27) and configured to hold the first end of the tube open, seeing as how ring 27 provides an opening to receive water from the gutter. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify McGill to include a downspout removably attached to the downspout and arranged to receive water flowing along the flexible protrusion, as suggested by Knoop et al., in order to provide a means to direct water out of the gutter and onto the ground so that water does not pour out of the gutter creating the possibility to dampen the users of the tent.

5. Claims 72 and 75-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Itzigebl (DE-3606278 A1) in view of Knoop et al. (US-6,612,075 B1).

Itzigebl shows a fabric covering comprising a flexible gutter (3) arranged to direct water along the fabric covering. Itzigebl lacks a downspout arranged to receive water flowing along the gutter. Knoop et al. teaches a downspout meant to be removably connected to a gutter (20) to receive water at a first end which comprises a flexible bead (27) and configured to hold the first end of the tube open, seeing as how flexible bead 27 provides an opening to receive water from the gutter. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Itzigebl to include a downspout arranged to receive water flowing along the gutter, as suggested by Knoop et al., in order to provide a means to direct water out of the gutter and onto

the ground so that water does not pour out of the gutter creating the possibility to dampen the users of the tent. Furthermore, Knoop et al. teaches the downspout to be made of any flexible waterproof material (column 2, lines 45-48) and it would have been obvious to make the downspout of fabric.

### ***Response to Arguments***

6. Applicant's arguments with respect to claim 41 have been considered but are moot in view of the new ground(s) of rejection.
7. Applicant's arguments filed 10/26/07 have been fully considered but they are not persuasive. Applicant argues that Knoop et al. does not teach a flexible bead at the first end of the fabric downspout. AS mentioned in the rejection above, element 27 is regarded as the flexible bead and does hold the first end of the downspout open since it attaches to the gutter and provides an opening for receiving water.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Jackson whose telephone number is (571) 272-2268. The examiner can normally be reached on Monday through Friday 8:30am - 5pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on (571) 272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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DNJ  
DNJ

  
DAVID DUNN  
SUPERVISORY PATENT EXAMINER